
(1999) 05 DEL CK 0023
In the Delhi High Court
Case No : C.W.P. No. 387 of 1987

U.R. Arya

APPELLANT

Vs

Director of Education, Delhi Administration and Others

RESPONDENT

Date of Decision : 01-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 80 DLT 203 : (1999) 50 DRJ 527

Hon'ble Judges : K. Ramamoorthy, J

Bench : Single Bench

Advocate : R.S. Tomar, for the Appellant; B.N. Dhar, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramamoorthy, J.—The petitioner was appointed as Geom. & Mech. Drawing Teacher in the third respondent-School w.e.f. 1.12.1965. Subsequently, scale of his pay of his grade was increased and that was also given. On coming into force the Delhi School Education Act, 1973 the qualifications were given and the petitioner did not satisfy those qualifications. The petitioner having failed to obtain the relief before the Authorities concerned has filed the writ petition praying for the following reliefs :

"(A) A Writ of Mandamus and/or any other writ, order or direction, directing respondents (a) to sanction in favor of the petitioner, the same relaxation and benefits of higher pay which have been sanctioned by them in favor of the others;

(B) Not to interfere with the petitioner's functioning against the P.G.T. post, teaching XI & XII classes on which post he has been teaching continuously since 1965 and has been holding a lien for last more than 20 years;

(C) Not to discriminate between petitioner, on the one hand and on other similarly situated teachers, in the matter of grade, pay, allowances and higher promotions merely on the basis of qualifications differences;

(D) To approve the recommendations of Departmental Promotion Committee held in 1981, recommending the promotion of petitioner to the grade of Post Graduate Teachers (Engineering and Drawing) w.e.f.1973.

(E) The petitioner be granted costs of the petition as against the respondents."

2. The learned Counsel for the petitioner Mr. R.S. Tomar referred to the Certificate from the Directorate of Education, Zone VIII Girls, New Delhi on 3.10.1974, which reads as under:

"This is to certify that Mrs. Asha Satwik, Sr. Music Tr. and Sh. U.R. Arya, Sr. Draw. Tr., Nutan Marathi Hr. Sec. School, are working against the sanctioned posts of P.G.T.'s in respective subjects w.e.f. 1973-74."

The learned Counsel referred to the order issued by the Deputy Director of Education dated 7.8.1979 wherein it is stated:

"The following adjustment of surplus staff is affected against the existing vacancies in the Govt. Aided Schools with effect from 1.8.1979 so that studies of students may not suffer. The incumbents will continue to draw their salaries from their parent schools till further orders.

Compliance may be reported to the undersigned by 31.8.1979 positively under intimation to the Education Officer concerned.

S.No. S. No. Name of the Tr. with Designation Name of the School from where rendered surplus. Name of the School where ordered to be absorbed. Remarks

ZONE VI (GIRLS)

46. Sh. U.K. Arya, Sr. Drg. Tr. Nutan Marathi, HSS, Paharganj. Nutan Marathi HSS, Paharganj Against the post of PGT (Drg.)

47. Smt. A. Satwik, Sr. Music Tr. --do-- -- do-- --do--

70. Sh. Amar Singh, Chowkidar --do-- Kamlesh Balika Vidayala, SS, Sitaram Bazar, Delhi. Against a vacant post.

55. Miss Sarabjit Kaur, TGT SGHK, HSS, Bangla Sahib. Nutan Marathi HSS, Paharganj . --do--

67. Smt. Uma Bhargava PGT (Eng.) Vidya Gian Mandir SS, Paharganj, --do-- --do--

3. According to Mr. Tomar, the learned Counsel for the petitioner, in the year 1981 the DPG of the School considered the case of the petitioner recommending for promotion to the post of PGT (Eng. Drg.). The learned Counsel referred to the communication from the School to the Dy. Director on 16.3.1982, which reads as under :

"With reference to your letter No. 132 dated 25.2.1982 on the subject mentioned above, we have to state that the D.P.C including the subject specialist, found the

teacher qualified for the post, after due consideration.

In addition to this if it is found that he lacks any qualifications, relaxation (Vide Circular No. F.2(41)-72-5-11 12/01-17 page 6 under note No. 4, copy attached can be given to him considering his long experience and the fact that he is handling the examination going Higher Secondary and Senior Secondary classes for the last 16 years.

You are requested to consider his case favourably."

4. According to the learned Counsel Mr. Tomar, respondents had considered granting relaxation to the teachers similarly situated like the petitioner and he should have also been granted relaxation and promoted to PGT. The learned Counsel further submitted that this Court in C.W. No. 1479/73 in the case of M.L. Sharma, Sr. Drawing Teacher had directed and the respondents in the instant case are bound to follow the directions issued by this Court:

"In my view, the petitioner cannot insist that he has a right to teach any particular class though he may have a justified grievance if his pay and allowances are affected because of retrospective amendment of the recruitment rules. The Pay scale of teachers in the common cadre of senior grade teachers cannot be different and if higher scale is given to teachers in the senior grade the petitioner who was in the senior grade would be entitled to the higher scale of pay."

According to the learned Counsel for the petitioner, the judgment in the above case is followed by the respondents with reference to School run by the Government but in the case of aided Schools the respondents are not following the same.

5. The learned Counsel for the first respondent Mr. B.N. Dhar submitted that when the petitioner does not satisfy the requirement of the statutory rules, he cannot claim promotion. The Education Officer had passed the following order on 18.3.1986 :

"Sub: Representation of Shri U.K. Arya, Drg. Tr. for his promotion to the post of PGT (Engg. Drg.) request for.

With reference to the representation (unsigned) dated 31.1.1986 of Shri U.R. Arya, Drawing Teacher for his promotion to the post of P.G.T. (Engg. Drawing) addressed to Hon"ble Lt. Governor, Delhi.

I am to say that the points raised by Shri U.R. Arya in his representation under reference have already been examined and considered at length and he is not eligible for promotion. The teacher concerned may be informed accordingly."

6. According to the learned Counsel for the respondents Mr. Dhar, the above order dated 18.3.1986 is in accordance with law and the petitioner cannot seek to challenge the same, when admittedly he does not satisfy the requisite qualifications prescribed. The learned Counsel for the petitioner Mr. Tomar

submitted that under Rule 98 there is a deeming provision that if the representation by, the Management is not considered by the Directorate of Education within a particular period, the Directorate of Education is deemed to have granted requisite promotion.

7. Mr. Dhar, the learned Counsel for the Directorate of Education submitted that the petitioner cannot rely upon this provision as the claim for promotion can be made only if the petitioner satisfies the requirement of the qualifications prescribed and when he seeks relaxation the petitioner cannot rely upon the deeming provisions.

8. The petitioner, who does not satisfy the qualifications prescribed under the Delhi School Education Act, 1973, cannot claim relaxation as a matter of fact. The learned Counsel for the first respondent Mr. Dhar said, as a matter of fact, an opportunity was given to the petitioner to acquire the requisite qualifications and he did not avail of it.

9. Whatever be the position, when the petitioner does not have the requisite qualification under law, he cannot in law claim the reliefs. On this ground, I am not inclined to accept the submissions made by the learned Counsel for the petitioner and accordingly, the writ petition stands dismissed. There is no order as to costs.